

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
ENTERED

APR 12 2005

GALVESTON DIVISION

Michael N. Milby, Clerk

MICHAEL A. KRAUSE, #303163

V.

JUDGE LONNIE COX, ETAL.

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§

CIVIL ACTION NO. G-05-209

**REPORT AND RECOMMENDATION**

On April 8, 2005, Michael A. Krause, an inmate at the Galveston County Jail, filed his "Original Petition for Writ of Habeas Corpus." In his Petition, Krause complains that he has been held in jail since December 10, 2003, and has not yet been brought to trial. In his prayer for relief, Krause seeks an Order from the District Court compelling the 56<sup>th</sup> District Court of Galveston County and the Galveston County District Attorney to proceed to trial or release him on a "P.R." Bond.

What Krause really wants is the issuance of a Writ of Mandamus. Unfortunately, for Krause, a United States District Court has no superintending function over state court proceedings. Robinson v. Illinois, 752 F.Supp. 248 (N.D. Ill. 1990) An action in mandamus to direct state courts or their judicial officers in the performance of their duties is not within the jurisdiction of the United States District Courts under 28 U.S.C. § 1361. McMahan v. Oklahoma, 412 F.Supp. 639 (W.D. Okla. 1975) See also Harris v. Department of Corrections, 426 F.Supp. 350 (W.D. Okla. 1997) The District Court simply lacks the subject matter jurisdiction to consider Krause's Petition and it is, therefore, the **RECOMMENDATION** of this Court that his "Original Petition for Writ of Habeas Corpus" be **SUMMARILY DENIED**.

The Clerk **SHALL** send copies of this Report and Recommendation to the Plaintiff. Plaintiff **SHALL** have until **April 28, 2005**, in which to have written objections, filed pursuant to 28 U.S.C. § 636(b)(1)(C), **physically on file** in the Office of the Clerk. The Objections SHALL be mailed to the United States District Clerk, P.O. Drawer 2300, Galveston, Texas 77553. Any Objections filed **SHALL be contained in a written document specifically entitled "Objections to the Report and Recommendation of the Magistrate Judge"**, which will then be forwarded to the District Judge for consideration. Failure to file written objections within the prescribed time **SHALL** bar the aggrieved party from attacking on appeal the factual findings and legal conclusions accepted by the District Judge, except upon grounds of plain error.

**DONE** at Galveston, Texas, this 12<sup>th</sup> day of April, 2005.

  
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JOHN R. FROESCHNER  
UNITED STATES MAGISTRATE JUDGE